IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11050 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHEBUBBHAI ABDULBHAI MANSURI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11050 of 2002

Mr.H.N.Joshi for M/S THAKKAR ASSOC. for Petitioner.

Mr. Pancholi,AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/01/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has

challenged the order of detention dated 4-10-2002 passed against him by the District Magistrate,Ahmedabad, whereby the petitioner has been detained under subsection (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,1980 ("PBM" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that the petitioner was given licence for dealing in blue kerosene which is an essential commodity and the same was required to be sold on subsidized rates. It is also mentioned therein that the petitioner has sold/transferred certain quantity of the said kerosene illegally to one Ayubbhai who ultimately converted the same into white kerosene, and thereafter, sold the same charging a higher price. The petitioner is accordingly detained by way of preventive detention under the provisions of the "PBM".

3. On account of the said incident the licence of the petitioner came to be suspended on 6-7-2000 for a period of 90 days. At the time of hearing of the petition, the learned Advocate for the petitioner submitted that the co-detenu=Ayubhbhai was already released by the State Government on recommendation of the Advisory Board and on that ground the petitioner is required to be released. It is further submitted that even though the incident in question had taken place on 9-6-2002 and the statement of the petitioner has also been recorded as back as on 26th July,2002, the detaining authority had passed the order of detention on 4-10-2002. Thus, there being such a long delay between the passing of the order of detention and the date of occurrence of the incident, the object of detaining the present petitioner under preventive detention is lost, and therefore, the order of detention is required to be set aside.

4. So far as the first contention of the petitioner about the co-detenu having been released is concerned, it is submitted by Mr. Pancholi that certain material was not considered by the detaining authority while passing the order of detention and on that ground the detention order was revoked on the basis of the recommendation of the Advisory Board. He submitted that however, in the case of the present petitioner, the detaining authority has reached the conclusion after considering the material available on record and there is no such defect of a similar nature as in the case of detention of co-detenu Ayub.

5. Considering the arguments advanced by the learned AGP Mr. Pancholi, in my view, there is no substance in the first contention. If there is material available on record in the case of the present petitioner, naturally his case stands on a different footing and simply because the co-detenu having been released by revoking the detention order that ipso facto cannot be made applicable in so far as the present petitioner is concerned.

6. So far as the second contention in connection with the delay that has occasioned in passing the detention order is concerned, the detaining authority has not filed any affidavit-in-reply; nor has the detaining authority pointed out as to how the detention order came to be passed after a gap of more than four months from the date of occurrence of the incident. Thus, there being unexplained inordinate delay in passing the detention order by the detaining authority, the order of detention is required to be quashed and set aside on this sole ground.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 4-10-2002 passed by the District Magistrate ,Ahmedabad is hereby quashed and set aside. The petitioner-detenu-Shri Mahebubbhai Abdulbhai Mansuri is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J.)

****

stanley-pbm.